

Commission Discussion and Conclusion

1. While Staff and the AG's arguments may have ~~some~~ merit, it is not within the scope of this docket for the Commission to examine and decide such ~~complex~~ matters in the first instance. ~~To be sure, Staff puts out the issue based precisely on the claim that there is no federal requirement for an ILEC to provide stand-alone transport. As previously mentioned under Checklist Item #14, their arguments fall outside the obligations and showings under the checklist. Clearly thus, there is no compliance issue to be addressed.~~ What the AG and Staff seek to have the Commission here do, necessitates an adjudication of party's rights and accordingly, would require proper notice and the opportunity to be heard in that particular context.

2. The California PUC decision, on which the AG would rely, has not been ~~sufficiently~~ discussed or analyzed. ~~in any meaningful way. We have no particulars of the evidence in California or how the matter was decided or how the situation relates to Ameritech. It is not clear from its presentation just why the AG believes California to be good authority or any authority for that matter. The AG is certainly aware that our decisions arise from the evidence taken and considered in the proper right context. While the decision may have merit, we cannot merely adopt conclusions of other state agencies in place of such evidence.~~

3. ~~To the extent that AI is in compliance with ASCENT I, and ASCENT II, we need not and ought not go further. That said, we find compelling the arguments proffered by the AG regarding SBC's affiliate structure. In ASCENT I, the Court determined that the data affiliates of incumbent LECs are subject to all obligations of Section 251 (c) of the Act. Connecticut 271 Order. In ASCENT II, the Court upheld the FCC order which determined that the discount-for-resale provision of section 251(c)(4)(A) applies when an incumbent offers DSL services to an end-user, but not where it offers DSL services to an ISP. There is no showing of non-compliance with this authority. The AG informs us that SBC may be avoiding its resale obligations due to the layered affiliate structure it currently has in place. In addition, the AG notes that SBC's affiliate resells only minimal service to unaffiliated ISPs. Furthermore, Staff AI informs, and neither Staff nor the AG dispute, that SBC bundles its local telephone service with DSL service provided by its affiliate and markets the bundle under the SBC brand name. Thus, SBC-Illinois appears to be presenting itself to the public as available to offer DSL service. We are troubled by the anecdotal evidence in this regard.~~

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5. The AG contends that the Commission must examine SBC's affiliate structure to determine whether it unlawfully shields SBC from its resale obligation. The Commission agrees. Resale is not only a federal requirement under Section 251(c)(4) of the Telecommunications Act but also a state requirement under Section 13-801(f) of the Public Utilities Act. To this end, the Commission directs our Staff to conduct a workshop for the purposes of discussing issues related to SBC's advanced services affiliate structure. This workshop should include, but not necessarily be limited to, the following matters: (a) whether SBC is unlawfully avoiding its resale obligations under

Section 251(c)(4) of the Act and/or Section 13-801(f) of the Public Utilities Act, (b) whether SBC is in compliance with the AADS certification order in Docket 94-0308, (c) to the extent it is determined that a formal investigation is necessary, what type of proceeding is best suited for examining SBC's affiliate structure (e.g., show cause proceeding, affiliate rulemaking, etc.), and (d) whether SBC's practice of bundling DSL service with local telephone service impedes competition in the local service market. We encourage all interested parties to fully participate in this workshop. Once the workshop is complete, Staff is directed to provide to the Commission a Report summarizing the workshop discussions (including the matters listed above) and a recommendation of whether or not to initiate a formal investigation. To the extent Staff recommends initiating an investigation, Staff should also provide the appropriate initiating order.

broadband issues are being pursued by the FCC in a number of active proceedings. We might reasonably assume that the FCC is aware of the issues raised here that we are in no position to address for the first time in this type of proceeding.